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DATE: 8/13/2002

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Date: MAY 14 2002

Contact Person:

Identification Number:

Telephone Number:

Employer Identification Number:

Dear Applicant:

This is in reply to your application for recognition of exemption under section 501(c)(3) of the Internal Revenue Code.

We have considered the information you have submitted and have concluded that you do not qualify for recognition of exemption under section 501(c)(3) of the Code because more than an insubstantial part of your activities are not in furtherance of a charitable purpose.

You are currently recognized as exempt from Federal income tax as a title holding company described in section 501(c)(2) of the Code. In [REDACTED] you amended your governing instrument to comply with the organizational requirements of section 501(c)(3) of the Code. Your filed your application for recognition of exemption under section 501(c)(3) in [REDACTED]

The information submitted establishes that you are engaged in community and economic development initiatives such as providing affordable housing and economic opportunities for low-and moderate-income persons. In your letter of [REDACTED] you state that you fulfill your section 501(c)(3) purpose "through separate corporations, which are set up for each housing project." The corporation established for each partnership acts as the general partner in the limited partnership and holds a 1 percent interest in the partnership. A related organization, the [REDACTED] (hereinafter referred to as [REDACTED]) acts as the initial limited partner in each partnership. The general partners act on the behalf of the partnerships on all issues, including construction, management and maintenance. You own 49% of the economic interest in each of 4 general partners each of which is a separate independent corporation for each housing project. [REDACTED] has a 51% interest in each corporation.

As stated above [REDACTED] acts as the initial limited partner in each project. [REDACTED] is described in your submissions as an association of [REDACTED] urban-suburban churches. The information you have submitted indicates that in at least two of the four partnerships you are involved in [REDACTED] has redelegated its right to sell limited partnership interests to a for-profit corporation. In [REDACTED] the current limited partner is [REDACTED]

[REDACTED] and in [REDACTED] the current limited partner is also a [REDACTED]. You describe the [REDACTED] as an unrelated organization which pays you for the housing credits provided by [REDACTED] for the housing projects you are involved in.

You have established 4 partnerships and 4 general partner corporations to date. The partnerships are providing affordable housing and ownership opportunities in targeted areas. Although in operation the existing partnerships have keyed on low income residents; your governing instrument provides that you are established to provide services to low and moderate income residents.

As initially established you were to provide various social services to the residents in the housing projects you are involved in. However, the information you have submitted indicates that this role has often been reassigned or sold to an unrelated corporation. For example [REDACTED] has contracted with an organization referred to as [REDACTED] to provide counseling, after school and support services. You have also submitted a copy of a contract with an [REDACTED] which is to provide employment support services to residents of the housing [REDACTED]. Similarly, in response to our information letter of [REDACTED], you stated that "support services to all residents will be provided by [REDACTED]"

The financial information you have submitted indicates that you receive some income from property rentals and a certain amount of interest income from related corporations. You have even earned a small amount of royalty income from a piece of property you own has a gas well. However, your primary source of income is the development fees for the services provided to tax credit projects to develop the projects and oversee their construction. This financial information also indicates that you have made fairly substantial loans to each of the limited partnerships.

You have submitted an Agreement for Development Services which was entered into on [REDACTED] between yourself and [REDACTED] and [REDACTED]. However, this project was developed prior to you being established as a section 501(c)(3) organization. Similarly, the [REDACTED] grant received from the State of [REDACTED] Low and Moderate-Income Housing Trust Fund, took place prior to your incorporation as an organization described in section 501(c)(3). Therefore these activities are not attributable to you in determining qualification for recognition of exemption.

Section 501 (c)(3) of the Code exempts from federal income tax organizations organized and operated exclusively for charitable or educational purposes.

Section 1.501 (c)(3)-I (c)(1) of the Regulations provides that an organization will be regarded as 'operated exclusively for one or more exempt purposes only if it engages primarily in activities which accomplish exempt purposes.

Section 1.501 (c)(3)-I (d)(1)(ii) of the Regulations provides that an organization is not organized or operated exclusively for exempt purposes unless it serves a public rather than a private interest. Thus, an organization must establish that it is not organized or operated for the

benefit of private interests such as designated individuals; the creator or his family, shareholders of the organization, or persons controlled directly or indirectly by such persons.

Section 1.501(c)(3)-1(d)(2) of the Regulations provides that the term 'charitable' is used in section 501(c)(3) in its generally accepted legal sense. Such term includes: relief of the poor and distressed or of the underprivileged; advancement of religion; advancement of education or science, erection or maintenance of public buildings, monuments, or works; lessening the burdens of government; and promotion of social welfare by organizations designed to accomplish any of the above purposes, or (i) to lessen neighborhood tensions; (ii) to eliminate prejudice and discrimination; (iii) to defend human and civil rights secured by law; or (iv) to combat community deterioration and juvenile delinquency.

Section 1.501(c)(3)-1(e)(1) of the regulations provides that an organization may meet the requirements of section 501(c)(3) although it operates a trade or business as a substantial part of its activities, if the operation of such trade or business is in furtherance of the organization's exempt purpose or purposes and if the organization is not organized or operated for the primary purpose of carrying on an unrelated trade or business, as defined in section 513.

In Better Business Bureau of Washington, D.C., Inc. v. United States, 326 U.S. 279 (1945), Ct.D. 1650, C.B. 1945, 375; the Supreme Court of the United States held that the presence of a nonexempt purpose, if more than insubstantial, would destroy tax exempt status as a charitable organization.

In United States v. Wells Fargo Bank, 485 U.S. 351, 108 S. Ct. 1179, 99 L.Ed. 2d 368 (1988), the Supreme Court held that an organization must prove unambiguously that it qualifies for a tax exemption.

In Moline Properties, Inc. v. Commissioner, 319 U.S. 436, 438 (1943); the Court held that for federal income tax purposes, a parent corporation and its subsidiary are separate taxable entities so long as the purposes for which the subsidiary is incorporated are the equivalent of business activities or the subsidiary subsequently carries on business activities.

Harding Hospital, Inc. v. United States, 505 F.2d 1068 (1974), holds that an organization seeking a ruling as to recognition of its tax exempt status has the burden of proving that it satisfies the requirements of the particular exemption statute. Whether an organization has satisfied the operational test is a question of fact.

In Krivo Industrial Supply Co. v. National Distillers and Chemical Corp., 483 F.2d 1098, 1106 (5th Cir. 1973); the court recognized that in some instances the parent corporation so controls the affairs of the subsidiary that it is merely an instrumentality of the parent and the corporate entity of the subsidiary be disregarded.

In Britt v. United States, 431 F.2d 227, 2334 (5th Cir. 1970) the Court held that the existence of a corporation will generally not be disregarded where it is organized with the bona fide intention that it will have some real and substantial business function.

Whether an organization has satisfied the operational test is a question of fact. See Harding Hospital, Inc. v. United States, *supra*. In addition, the existence of more than an

[REDACTED]

insubstantial nonexempt purpose will preclude exemption. See Better Business Bureau of Washington, D.C., Inc. v. United States, supra. See also Old Dominion Box Co. v. United States, supra, which holds that operating for the private benefit of individuals is a substantial nonexempt purpose. As emphasized by the Supreme Court in United States v. Wells Fargo Bank, supra, qualification must be proven unambiguously.

The information you have submitted indicates that your sole activity appears to be your involvement in creating other corporations which act as general partners in limited liability partnerships which provides housing to low income individuals. You are not a partner in the limited partnerships. A for-profit corporation of which you own a 49 % interest is the general partner in the partnerships and a related organization holds a 51 % interest in it. The general partner only holds a 1 % interest in the limited partnership. The general partner has the responsibility to provide development services to the project. However, in several instances the general partners have re delegated these duties and responsibilities to for profit corporations.

In summation, you seek exemption based on the activities of a for profit corporation which is acting as a general partner in the partnership. Furthermore, in certain instances it appears that even these limited duties have been sold or re delegated to for profit corporations.

The activities of a separately incorporated subsidiary cannot ordinarily be attributed to its parent organization unless the facts provide clear and convincing evidence that the subsidiary is in reality an arm, agent or integral part of the parent. Here, there is no evidence that any of the general partners are so controlled by you that they are merely the instrument by which you carry on your exempt section 501(c)(3) activities. Each general partner acts independently, they can borrow money, enter into contracts or delegate rights and responsibilities on their own behalf. Nor do you own a majority interest in any of the general partners. [REDACTED] has a 51 % interest in each one and you have a 49 % interest. We recognize that, in the past, you have been involved to some degree in various projects. However, these activities took place before you were established as a section 501(c)(3) organization and the current state of your involvement in them is unclear. In fact, the only clear current activities you appear to be carrying on are acting as a conduit of state housing monies or a lender of such monies. As such you are not actually carrying on a charitable activity. There is no information establishing that you are directing the use of the funds for a charitable purpose nor do you appear to control the funds to ensure that they are used exclusively for charitable purposes.

Accordingly, based on all the facts and circumstances, we conclude that you have not established unequivocally that you qualify for recognition of exemption from federal income tax as an organization described in section 501 (c)(3) of the Code because more than an insubstantial part of your activities does not establish a charitable purpose. See Better Business Bureau of Washington, D.C., Inc. v. United States, supra.

We recognize that an organization can operate a trade or business as a substantial as a portion of its activities and still qualify for recognition of exemption under section 501(c)(3). See section 1.501(c)(3)-1(e)(1) of the regulations. However, the operation of this trade or business must be in furtherance of an organizations exempt purposes. Inasmuch as we have concluded that you are not operated to accomplish charitable purposes, this provision of the regulations is not applicable to you.

[REDACTED]

Accordingly, you do not qualify for exemption as an organization described in section 501 (c)(3) of the Code.

Contributions to you are not deductible under section 170 of the Code.

You have the right to protest this ruling if you believe it is incorrect. To protest, you should submit a statement of your views to this office, with a full explanation of your reasoning. This statement, signed by one of your officers, must be submitted within 30 days from the date of this letter. You also have a right to a conference in this office after your statement is submitted. You must request the conference, if you want one, when you file your protest statement. If you are to be represented by someone who is not one of your officers, that person will need to file a proper power of attorney and otherwise qualify under our Conference and Practices Requirements.

If you do not protest this ruling in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Code provides, in part, that a declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

If we do not hear from you within 30 days, this ruling will become final and a copy will be forwarded to the Ohio Tax Exempt and Government Entities (TE/GE) office. Thereafter, any questions about your federal income tax status should be directed to that office, either by calling 877-829-5500 (a toll free number) or sending correspondence to: Internal Revenue Service, TE/GE Customer Service, P.O. Box 2508, Cincinnati, OH 45201. The appropriate State Officials will be notified of this action in accordance with Code section 6104(c).

Sincerely,

(signed) Terrell M. Berkovsky

Terrell M. Berkovsky
Manager, Exempt Organizations
Technical Group 2

[REDACTED] [REDACTED]